United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-1340

To Be Argued By Ann T. Wallace

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, APPELLEE

v.

HARVEY KORNBLUTH, APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE

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INDEX

CITATIONS

Cases:

PAGE

PAGE

Statutes and rule:

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v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLEE

ISSUES PRESENTED

1. Whether the failure of the government to provide appellant with a statement given by Peter Frappollo until the eve of trial or to produce Frappollo at trial violates due process of law.

2. Whether the evidence was sufficient to convict appellant of conspiracy.

STATUTE INVOLVED

18 U.S.C. 1014 provides in pertinent part:

> Whoever knowingly makes any false statement ... for the purpose of influencing in any way the action of ... any bank the deposits of which are insured by the Federal Deposit Insurance Corporation ... upon any application ... or loan ... shall be fined not more than $5,000 or imprisoned not more than two years, or both.

STATEMENT

Following a trial by jury in the United States District Court for the Eastern District of New York, appellant was convicted of making false statements on a loan application to a federally insured bank, and of conspiring to commit the substantive offense, in violation of 18 U.S.C. 1014 and 371. He was sentenced to one year's imprisonment on the substantive count, to be followed by five year's probation on the second count, and fined $2,000. In addition, the court ordered as a special condition of the probation that appellant make restitution.

1. Obtaining a $4,000 bank loan

In March 1973, appellant was hired as a salesman by Anthony Morano and his partner, who owned and operated an automobile leasing company, MEE Leasing Associates, Inc., West Hempstead, New York (T. 135, 262-265).[1/] At approximately the same time, appellant was introduced to James Carmine Florio, owner of an automobile parts business headquartered at the same location as Morano's business (T. 134-135, 265).

On April 25, 1973, appellant asked Florio to accompany him to Freeport to look at a 1972 Cadillac. Florio agreed to inspect the car as he had done for appellant on two prior occasions (T. 137). Appellant told Florio that he would obtain a loan and that he would show Florio the Cadillac prior to obtaining the loan (T. 138). On the way to Freeport appellant passed Worldwide Auto Auctions, pointed out a blue Cadillac with a white interior and top, and stated, "I'm not a hundred percent sure but I think that's the car" (T. 138). Appellant did not stop, but continued on to Freeport, where he parked in a lot across from the Chase Manhattan Bank (T. 138-139). There they met co-defendant Tommy Ragusa,[2/] Morano, Peter Frappollo

1/ Thomas Ragusa, who was charged in the conspiracy count of the indictment and tried jointly with appellant, was found not guilty.

2/ "T." refers to the three-volume transcript of trial testimony, dated May 28-30, 1975. Other volumes of the transcript, containing inter alia the summations of counsel and the court's closing charge, are separately paginated.

and James Hadjilazou (also known as "Lazos" and "Jimmy the Greek"), who was an automobile dealer (T. 138, 192-193, 195, 265, 267-268). Hadjilazou and appellant then entered the Chase Manhattan Bank to inquire about obtaining a $5,000 loan for appellant (T. 139, 195, 267). Hadjilazou had been told that appellant wanted the loan to purchase a 1972 Eldorado Coupe which Hadjilazou owned and which was parked at his residence (T. 195-196, 199). A bank employee told Hadjilazou that appellant had too many outstanding loans and that the bank would not approve the requested $5,000 loan (T. 196).

Appellant and Hadjilazou returned to the parking lot and informed the others that appellant's loan application had been rejected (T. 140). Ragusa responded, "He has to get the money" (T. 140, 269), indicating that appellant owed him $5,000 or $7,000 (T. 281). Hadjilazou suggested that appellant should go to the First National Bank of East Islip,[3/] and gave him the serial number of the Eldorado Coupe (T. 140, 196-197, 270). Appellant agreed and, accompanied by Florio, proceeded to the East Islip Bank (T. 141). There, at appellant's request, Florio filled in some portions of appellant's loan application (T. 141-142, 155, 157). However, appellant personally entered most of the information, listing $24,000" as his salary, and placing "4 1/2" in a space reserved

3/ It was stipulated that the deposits of the East Islip Bank were insured by the Federal Deposit Insurance Corporation (T. 132).

for setting forth the number of years employed at his present job (T. 149-150). These figures were inaccurate.[4/] Moreover, appellant indicated on the application form that the purpose of the loan was to buy a vehicle costing $7,200 (Gov. Ex. 8).[5/] After submitting the loan application, appellant and Florio left the bank and drove to Worldwide Auto Auctions. Appellant stopped momentarily in front of a 1972 Cadillac and stated, "That's the car." Florio responded, "It looks like its in good shape." The two then departed without making any further inspection of the vehicle (T. 151).

On April 26, appellant was notified that his application for a $5,000 loan had been rejected by the East Islip Bank because of other outstanding encumbrances. Later, appellant notified the bank that he would need only $4,000. Believing that the equity value of the vehicle furnished adequate protection for a $4,000 indebtedness, the bank approved the loan at that amount (T. 110-115, 121).

On April 29, appellant and Morano travelled to the East Islip bank, where appellant obtained a check in the amount of $4,000, made payable to "Arthur Kornbluth and James Hadjilazou" (Gov. Ex. 10; T. 91-93, 96). Appellant and Morano then drove to Worldwide

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4/ The evidence at trial further showed that appellant did not receive a salary, but worked "strictly" on commissions and that he was not employed for four and a half years by MBE Leasing Associates, which had been in business only since January 1973 (T. 264, 285).

5/ Gov. Exs. 1, 3, 8 and 10 are appended in the Government's Supplemental Appendix attached to the brief.

Auto Auctions. Appellant entered the office alone and when he came out, told Morano that the check had been signed by Hadjilazou (T. 271, 295). [6]

2. The $4,000 check is cashed and thereafter dishonored

A few days later Morano asked Florio to cash the check (T. 152). Florio cashed the check at his own bank in West Hempstead and gave the proceeds to Morano (T. 153, 273). Thereafter, Morano gave the cash to appellant's girlfriend, Jean (T. 273). Appellant told Morano that the proceeds were to be divided equally among a person named "Sonny", co-defendant Ragusa and appellant (T. 276).

In fact, Hadjilazou's endorsement on the back of the $4,000 check was a forgery. As a result, Florio's bank notified him that the check had been dishonored and that Florio owed the bank $4,000 (T. 154). [7] The check was returned to Florio, who attempted to obtain repayment from Morano. However, Morano denied involvement with the transaction, claiming that the loan had been obtained by appellant, who also received the proceeds (T. 178). Three or four days later, Florio told Ragusa that he intended to deliver the check to the police. Ragusa replied, "If you give me the check, I will see to it that you will get your money back, because of a

6/ Although appellant gave the impression that Hadjilazou was connected with Worldwide, Hadjilazou testified at trial that his businesses were known as Classic Motor Cars and Mobile Dairy Bars (T. 195).

7/ In order to satisfy his obligation to the bank Florio was forced to dispose of his business (T. 154).

fellow Peter Frappollo ...." Florio refused to surrender the check until he had received $4,000 in cash (T. 154). He subsequently notified law enforcement authorities of the matter (T. 154).

On May 3, 1973, F.B.I. Agents Crowe and Molloy met with appellant and Morano at Morano's request at a parking lot of a diner in West Hempstead (T. 41-43, 62). Kornbluth told the agents that he was having financial difficulties. After fifteen or twenty minutes the agents agreed to continue the conversation at appellant's residence (Tr. 43). Upon their arrival at appellant's residence, the agents advised appellant of his Miranda rights and appellant executed a waiver-of-rights form (T. 44-45, 47-48; Gov. Ex. 5). Appellant then told the agents that two weeks before the date of the interview two men, whom he feared, had entered his business office and stated that they had arranged for appellant to obtain a bank loan and documents that would purport to reflect that the proceeds of the loan would be used to purchase an automobile. Appellant then recounted his movements which resulted in his successfully obtaining $4,000 from the East Islip bank. Appellant acknowledged that he knowingly had falsified his loan application (T. 52-54).

I

THE FAILURE OF THE GOVERNMENT TO PROVIDE APPELLANT WITH A STATEMENT GIVEN BY PETER FRAPPOLLO UNTIL THE EVE OF TRIAL, OR TO PRODUCE FRAPPOLLO AT TRIAL, DID NOT VIOLATE DUE PROCESS OF LAW

Prior to trial appellant requested the government to furnish him "any information in possession of the government which may tend to exhonerate [sic] the defendant" (T. 350). The government responded in its bill of particulars that it had "no present knowledge of any 'Brady Material' in this case" (T. 37). At the commencement of trial the prosecutor furnished appellant a copy of an interview between F.B.I. Agent Martin Crowe and Frappollo (T. 3; Gov. Ex. 3). Frappollo had stated to Crowe that he had met appellant at Morano's office; that appellant had been looking for a car to buy; and that he thereafter arranged a meeting between appellant and Hadjilazou to discuss the purchase of a car. Frappollo also told the agent that he later learned that appellant did not buy Hadjilazou's car. Finally, Frappollo stated that he did not recall seeing Ragusa talking with appellant, and he denied knowledge of any efforts by himself or Ragusa to collect money from appellant or to cause appellant to obtain a loan from the First National Bank of East Islip (Gov. Ex. 3; T. 363-365).

After the opening statements defense counsel moved to dismiss the indictment on the grounds that the interview of Frappollo was exculpatory material which the government should have produced earlier in response to a request for materials discoverable under the rule set forth in Brady v. Maryland, 373 U.S. 83 (1963). The prosecutor responded that the Frappollo interview was neutral, rather than exculpatory and that it had been furnished out of an abundance of caution (T. 32-34, 38). Government counsel further advised the court that Frappollo had been subpoenaed by the government in April 1975; that Frappollo's attorney had been notified prior to trial that Frappollo remained under subpoena; and that the government did not intend to call Frappollo but that defense counsel could contact Frappollo's attorney if they wanted to call him as a witness (T. 34-35). The district judge denied the motion, stating that "Mr. Frappollo will be available and may be called by the defendants if they require him" (Tr. 39).

On the second day of trial the prosecutor advised the court that Frappollo's attorney told him that a friend of Frappollo had informed the attorney that Frappollo was in New York (T. 227). Defense counsel responded by renewing the motion to dismiss the indictment because of the apparent unavailability of Frappollo (T. 240-243). The prosecutor then asked the court to issue a bench

warrant and offered to stipulate to what Frappollo's testimony would be, based upon the Frappollo interview, should Frappollo not be available to the defense (T. 243-244). The court issued a bench warrant for Frappollo and reserved ruling on the defense motion for dismissal until the following day (T. 256).

On the following day the prosecutor stated that the bench warrant had issued on the previous night; that F.B.I. agents had looked for Frappollo; that Frappollo's attorney contacted everyone whom he knew to be acquainted with Frappollo; and that one person had told Frappollo's attorney that Frappollo was en route to New York from California (T. 330-331). Defense counsel again moved for dismissal of the indictment (T. 332-333). The court denied the motion, noting that "the Government has made diligent efforts to try to produce this witness" and that "it also appears that the defendants had means of communication or were personally in communication with Mr. Frappollo (T. 353).

At defense counsel's request, the court instructed the jury as follows (T. 542-543, 545-546):

> If it is peculiarly within the power of the Prosecution or the Defense to produce a witness who could give material testimony on an issue in the case, failure to call the witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to

a witness who is equally available to both parties or where the witnesses' testimony would be merely accumulative. The jury will always bear in mind the law never imposes on a defendant in a criminal case, the burden or duty of calling any witnesses or producing any evidence.

Now in this case Mr. Barlow [the prosecutor] had indicated that Mr. Frappolla would be available to testify in this case. The Court directed the Government to make Mr. Frappolla available to the defense. The defense relied on the fact that Frappolla would be available. The Government failed to produce Mr. Frappolla.

* * * *

The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence ....

* * * *

.... [I]n judging the credibility of the witnesses who have testified and in considering the weight and effect of all evidence that has been produced, the jury may consider the prosecution's failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available. The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence and no adverse inferences may be drawn from his failure to do so.

A. <u>The Government's Failure to Produce Frappolla's Statement Before Trial Did Not Violate The Doctrine Enunciated in Brady v. Maryland, 373 U.S. 83 (1963)</u>

1. In general, the due process clause "has little to say regarding the amount of discovery which the parties may be afforded."

Wardius v. Oregon, 412 U.S. 470, 474 (1973). However, Brady v. Maryland, 373 U.S. 83 (1963), holds that due process is violated when, following a demand by the defense, the prosecution suppresses evidence favorable to the accused and material either to guilt or punishment. Moore v. Illinois, 408 U.S. 786, 794-795 (1972). Brady does not expand the scope of pretrial discovery provided for in Rule 16, F.R. Crim. P.; United States ex rel. Lucas v. Regan, 503 F.2d 1, 3, n. 1 (2nd Cir. 1974), cert. den., 420 U.S. 939; United States v. Frick, 490 F.2d 666, 671 (5th Cir. 1973). cert. den. sub nom. Peterson v. United States, 419 U.S. 831. In short, since "[T]his Court and others have recognized that the rule announced in Brady is not a pretrial remedy," United States v. Scott, 524 F.2d 464, 467 (5th Cir. 1975) (citing Regan, supra) appellant's claim that he was entitled to a disclosure of Frappollo's statement in response to his request for pretrial discovery is clearly without merit.

2. Moreover, assuming arguendo that Brady applied at the pretrial stage, it was not properly invoked at that juncture by appellant. His discovery request was couched in the broadest terms, seeking "any information" having a tendency to exonerate him. Such a general request for all exculpatory information should be viewed as no better than no request at all. See United States v. Evanchik,

413 F.2d 950, 953 (2nd Cir. 1969); United States v. Ross, 511 F.2d 757, 763-764 (5th Cir. 1975); United States v. Burke, 506 F.2d 1165, 1168-1169 (9th Cir. 1974), cert. den., 421 U.S. 915; United States v. Hauff, 473 F.2d 1350, 1355 (7th Cir. 1973), cert. den., 412 U.S. 907; United States v. Addonizio, 451 F.2d 49, 64 (3rd Cir. 1971), cert. den., 405 U.S. 936; United States v. White, 450 F.2d 264, 268 (5th Cir. 1971), cert. den., 405 U.S. 1072; United States v. Conder, 423 F.2d 904 (6th Cir. 1970), cert. den., 400 U.S. 958; United States v. DiLorenzo, 49 F.R.D. 86, 90 (S.D.N.Y. 1969). Since the request was not narrowly and meaningfully drafted, the prosecution was not put on notice that the defense deemed important, information such as that contained in the Frappollo statement. After all, as the prosecutor at trial noted (T. 33, 38), a fair reading of the statement provided by Frappollo demonstrates that it fails on its surface to exculpate appellant of charges that he made a false statement to a federally insured bank, and that he conspired with others to make the false statement. According to his statement, Frappollo was not acquainted with appellant until April 1973, when he engaged in conversation with the latter while visiting Morano's office. The gist of the conversation was simply that, on learning that appellant was interested in buying a car,

he called Hadjilazou; that thereafter he learned that appellant and Hadjilazou had agreed to meet; that he had no further contact with appellant; and that a week later he was informed by Hadjilazou that appellant did not buy a car that Hadjilazou had for sale. The statement makes no references to meeting with other individuals at the Chase Manhattan Bank just before appellant and Hadjilazou entered that bank in their unsuccessful quest for a loan. Nor does that statement contradict any information known to the government before trial that appellant and others had planned a pretense of appellant seeking an automobile loan. Thus, in no sense was the statement exculpatory.

3. In addition, the events at trial demonstrate that the statement was not of a material nature. See Moore v. Illinois, 408 U.S. 786, 794-795 (1972). The only issue to which Frappollo's statement could conceivably be relevant was whether appellant's statement on the application for the loan that he intended to use the loan to purchase the automobile was false. Frappollo's statement that appellant had been looking for an automobile was not material to the issue whether the loan was sought for the purpose of buying an automobile. Moreover, according to his statement, Frappollo had no knowledge of appellant's efforts to obtain a loan.

The pertinent--albeit immaterial--effect of the statement lies, not in its essentially hearsay contents, but in its disclosure that Frappollo had a role in bringing appellant and Hadjilazou together following remarks by appellant (which would be inadmissible at trial because of their self-serving, hearsay nature) that he was interested in buying a car. Since defense counsel were aware of Frappollo's existence long before trial (as we show, infra), the statement could not have led to any discoveries that counsel, with diligent effort, otherwise would have been unable to make. Evidently counsel made no concerted effort to locate Frappollo before trial, limiting their quest to an inquiry at the addresses known to them, without pursuing the matter further, when it was discovered that Frappollo could not be found at those locations. Appellant fails to point out a factual basis for his contention that the "suppressed evidence" (i.e., the Frappollo statement) would have undoubtedly led the jury to entertain a doubt about appellant's guilt" (App. Br., p. 9), and we are unable to discern any foundation for that conclusory allegation.[8/]

8/ We recognize that if Frappollo had testified for the government, the pretrial statement would have been producible at the end of the witness' testimony, because it is "classic Jencks Act matter", United States v. Wertis, 505 F.2d 683, 684 (5th Cir. 1974), cert. den., 422 U.S. 1045; 18 U.S.C. 3500. However, we maintain that, as in Wertis, nothing contained therein elevated the Jencks Act statement to the status of Brady material.

4. Although we categorically assert that no error arose from the nonproduction of the Frappollo statement before trial, we proceed here to examine the effect upon appellant's case even if the government's conduct constituted error. In our view, the delay in producing the statement was harmless beyond a reasonable doubt. This is so because the evidence of appellant's guilt was overwhelming and the statement would not have detracted from the substantial evidence inculpating appellant in the conspiracy to execute a false loan application form. Particularly damaging is the testimony of Florio that, similar to the Frappollo statement, appellant initially had expressed interest in purchasing a car, but that ensuing events demonstrated unequivocally that the expression of interest in buying a car was a sham, designed to disguise a scheme to obtain a large amount of money otherwise unavailable for distribution to individuals totally unrelated to the purported automobile transaction. Nor would the statement have diminished the damaging effect of testimony given by other prosecution witnesses, especially the agent who gave an edited account [9/] of appellant's incriminating admissions.

9/ Agent Crowe's written account of his interview with appellant, not introduced in evidence although identified as Government Exhibit 1, contains a description, omitted in oral testimony, of the two individuals who appeared at appellant's office demanding money and thereafter arranging for a meeting with Hadjilazou. One of the two is identified as "Tommy," and is apparently co-defendant
[Footnote continues on next page]

In light of this, the failure of the government to produce Frappollo's statement in response to appellant's general pretrial discovery request is harmless beyond a reasonable doubt. United States v. Natale, decided November 28, 1975 (2nd Cir., Nos. 75-1276, 75-1298) (slip op., p. 806-807); United States v. Johnson, decided October 30, 1975 (2nd Cir., No. 75-1196) (slip op. p. 330-331); United States v. Muckenstrum, 515 F.2d 568 (5th Cir. 1975).

5. Finally, we submit that appellant's demand that the indictment be dismissed as the remedy for nonproduction of the statement is erroneous. Indeed, dismissal would have exceeded the scope of the action taken by the Supreme Court in Brady v. Maryland, the semenal decision. The duty of disclosure is not imposed to punish the prosecutor or the public, but rather to insure fairness to the accused. United States v. DeLeo, 422 F.2d 487, 499 (1st Cir. 1970), cert. den., 397 U.S. 1037. When the government fails to meet its obligation, the sanctions do not include immunizing the defendant from prosecution. Rather, the remedy depends upon the extent of

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[Footnote continues from previous page]

Ragusa; the other, called "Pete Appolo," may well have been Frappollo in light of the resemblence of the name and other evidence showing Frappollo's collateral relationship to the case. If Frappollo was indeed "Pete Appolo," the statement complained of here would hardly have been exculpatory. This would explain defense counsel's somewhat indifferent attitude toward contacting Frappollo before trial.

the harm. In appellant's situation we deal with a disclosure of a statement at trial rather than at an earlier time. Assuming that the government was dilatory, steps less drastic than dismissal could have been taken to insure fairness to appellant. One of the remedies might have been a continuance for defense counsel to truly analyze the impact of the newly produced statement, ascertain whether he in reality would benefit by the testimony of Frappollo, and determine how soon Frappollo could be produced. In fact, defense counsel failed to seek a continuance, and immediately opted for the harsh sanction of dismissal. Considering the contents of the statement and the all-or-nothing approach of counsel in terms of the remedy sought, the court can not be faulted for declining to dismiss the prosecution. See United States v. Miranda, decided December 3, 1975 (2nd Cir., No. 74-2651) (slip op., p. 6551-6564); United States v. Joyce, 499 F.2d 9, 22 (7th Cir. 1974), cert. den., 419 U.S. 1031; United States v. Anderson, 509 F.2d 312, 323-324 (D.C. Cir. 1974), cert. den., 428 U.S. 991.

B. The Government's Failure to Produce Frappollo at Trial did not Require Dismissal of the Case

The law is clear that defendants in non-capital cases are not entitled to a list of potential government witnesses. E.g.,

United States v. Hancock, 441 F.2d 1285 (5th Cir. 1971), cert. den., 404 U.S. 833; United States v. Addonizio, 451 F.2d 49, 64 (3rd Cir. 1971), cert. den., 405 U.S. 936; United States v. Marshak, 364 F. Supp. 1005, 1007 (S.D.N.Y. 1973). Moreover, the government is under no duty to use every witness it has subpoenaed. United States v. Rosa, 493 F.2d 1191, 1194 (2nd Cir. 1974), cert. den., 419 U.S. 850; United States v. Frick, 490 F.2d 666, 671 (5th Cir. 1973), cert. den. sub nom. Peterson v. United States, 419 U.S. 831. Pursuant to these principles of law, the prosecutor did not err in failing to reveal to defense counsel before trial the identity of Peter Frappollo or the fact that Frappollo had been served a subpoena. In customary circumstances Frappollo's absence at trial would not have provided appellant cause for complaint.

Appellant asserts that his case is evidently removed from the general rules because, once defense counsel had made known their desire to have Peter Frappollo present at the trial, the prosecutor, revealing that Frappollo had been served with a subpoena to be present at the original trial date and a letter notifying him that the subpoena was still operative despite a continuance of the trial date, had then "promised" (App. Br. 11) to produce Frappollo. In appellant's view, the government's failure

to fulfill that "promise," coupled with its neglect to disclose Frappollo's identity before trial, was fatal to the conviction (App. Br. 11-12). Appellant's claim is not meritorious.

As noted supra, the government was under no obligation to reveal to defense counsel its interview with Frappollo before trial or the fact that Frappollo had been served with a subpoena. Contrary to appellant's contention, there was nothing "exculpatory" about Frappollo's identity that warranted disclosure under the rules of discovery in criminal cases. Moreover, Frappollo was not within the exclusive control of the government. Defense counsel at trial acknowledged that they were aware of Frappollo before the start of the trial, and counsel for Ragusa admitted an unsuccessful (and, in our view, halfhearted) endeavor to locate Frappollo. During the pretrial stage the government did nothing to deprive defense counsel of their opportunities to locate or interview Frappollo. Accordingly, appellant has no basis for a legal claim premised--even in part--upon the prosecutor's nondisclosure of "the existence of Peter Frappollo" (App. Br. 11-12). United States v. Rivera, 513 F.2d 519, 531 (2nd Cir. 1975); United States v. Stewart, 513 F.2d 957, 960 (2nd Cir. 1975); United States v. Kinney, 500 F.2d 39, 40 (4th Cir. 1974); United States v. Jenkins, 478 F.2d 1061, 1063 (9th Cir. 1972), cert. den., 411 U.S. 920.

Moreover, the record refutes the allegation that the prosecutor promised to produce the witness. Initially, the prosecutor advised the court that Frappollo had been subpoenaed by the government in April 1975, and that he remained under government subpoena, although the government no longer intended to call him. He further told the court that he believed that defense counsel could contact Frappollo's attorney if they wanted Frappollo to testify in their behalf (Tr. 34-35). When it became apparent to the government that Frappollo might be unavailable, the prosecutor immediately requested a bench warrant, which the court issued. Thereafter, attempts by the government to serve the warrant were unavailing. It is our contention that when the prosecutor attempted to assume responsibility for the witness' presence, he did so gratuitously. Nevertheless, the defense was aware of Frappollo's existence and long before trial should have investigated whether he should be called as their witness. Despite what the district judge termed "diligent efforts to try to produce this witness" (T. 353), the eleventh hour attempt to locate Frappollo proved fruitless. That circumstance ought not to excuse defense counsel for failing to take measures independent of the belated government attempt to secure Frappollo.

At all events, the record amply shows that appellant and his co-defendant at trial benefitted rather than suffered from the absence of Frappollo. They were able to adduce testimony regarding Frappollo by means of an F.B.I. agent, who undoubtedly made a more favorable impression upon the jury as a defense witness than Frappollo could have made. They subsequently became the beneficiaries of a closing instruction to the jury regarding their reliance upon the government's representation that Frappollo would be available as a witness (T. 542-543). In addition, appellant offers no indication, even at this juncture, exactly how Frappollo could have been an integral part of the defense trial strategy; the matters contained in the record are sufficient to warrant the conclusion that realistically, testimony provided by Frappollo would have hindred the efforts of the defense. Thus, even if the prosecution is accountable for the absence of Frappollo at trial, appellant is not entitled to relief.[10/]

II

THE EVIDENCE WAS SUFFICIENT TO CONVICT APPELLANT OF CONSPIRACY

The evidence, as set forth in detail in the Statement, supra, viewed in the light most favorable to the government (Glasser v.

10/ Moreover, as we have discussed, supra, at 18, the court correctly rejected the drastic remedy of dismissal of the indictment, sought by appellant.

United States, 315 U.S. 60, 80 [1942]; United States v. McCarthy, 473 F.2d 300, 302 [2nd Cir. 1972]), shows clearly that appellant and others were involved in a scheme to obtain a loan by falsely representing the purpose of the loan to be the purchase of an automobile.

As stated by the Fifth Circuit, United States v. Jacobs, 451 F.2d 530, 535 (5th Cir. 1971), cert. den., 405 U.S. 955:

> Persons who enter into a conspiracy to commit a criminal offense do not do so openly, and generally a conspiracy can be established only by evidence of the attendant circumstances and the concerted acts and conduct of the alleged conspirators and the inferences reasonably deducible therefrom that logically and consistently warrant the conclusion that an unlawful agreement, express or implied, existed.

The evidence showed that although appellant had asked Florio to look at an automobile he intended to buy, appellant first went to the bank and applied for the loan. At that time he was not even sure that the Cadillac they had passed on the street on the way to the bank was the one he intended to buy (T. 138). When he observed the same car on the way from the bank to his place of employment, appellant told Florio that it was the car he intended to buy but did not ask Florio to inspect it (T. 151). Also, appellant never inspected the Cadillac owned by Hadjilazou (T. 199).

The distribution of the proceeds of the bank loan was consistent with the government's contention that appellant and his co-conspirators never contemplated purchasing a car with the funds. By appellant's own admission, the proceeds were intended to be divided among himself, co-defendant Ragusa, and a man named Sonny. Within a short time after the $4,000 check was issued by the bank, appellant, still in control of the check, secured a forged signature of the co-payee, and then apparently presented it to Morano for cashing, and not in furtherance of legitimate efforts to buy a car. Thereafter, when the check was dishonored, it was not appellant but co-defendant Ragusa who went to Florio to retrieve the bank check and guarantee payment. In light of the foregoing, the jury properly found the existence of an agreement between appellant and others that encompassed the making of false statements on a loan application. 11/

11/ Appellant sets forth an erroneous standard for determining the sufficiency of wholly circumstantial evidence to support a conviction. The "hypothesis of innocence" standard relied upon by appellant (App. Br. 13) has long been rejected by the federal courts. E.g., United States v. Grunberger, 431 F.2d 1062, 1066 (2nd Cir. 1970), cert. den., 406 U.S. 917; United States v. Aadal, 368 F.2d 962, 964 (2nd Cir. 1966), cert. den., 386 U.S. 907; United States v. Rusk, 512 F.2d 815 (5th Cir. 1975); United States v. Dye, 508 F.2d 1226, 1230 (6th Cir. 1974), cert. den., 420 U.S. 974; United States v. Heck, 499 F.2d 778, 790 (9th Cir. 1974), cert. den., 419 U.S. 1088; United States v. Taylor, 482 F.2d 1167, 1173 (10th Cir. 1973), cert. den., 414 U.S. 1159.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that appellant's conviction should be affirmed.

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Department of Justice
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Brief for Appellee (with attached Supplemental Appendix) have been mailed to counsel for appellant: Alan S. Roth, Esquire, Stephen N. Silver, Esquire; 1600 Central Avenue, Far Rockaway, New York 11691.

Ann T. Wallace

ANN T. WALLACE, Attorney
Department of Justice
Washington, D.C. 20530

DATED THIS 9th DAY OF JANUARY, 1976

SUPPLEMENTAL APPENDIX

GOVERNMENT EXHIBIT 9d #1 73CR1065

Hearing

GOVERNMENT EXHIBIT 9d #1 73CR1065

Arr. A

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/4/73

HARVEY ARTHUR KORNBLUTH was interviewed at 331 Connecticut Avenue, Massapequa, New York. At the outset he was furnished a form entitled "Interrogation; Advice of Rights" by SA MARTIN A. CROWE. After reading the form he executed a "Waiver of Rights", and thereafter furnished the following information:

KORNBLUTH advised he also uses the name HARVEY KAYE and H. ARTHUR KORNBLUTH.

KORNBLUTH advised that he is in fear of his life because of shylocks. He is having great difficulty making his shylock payments.

He advised he is currently employed as a salesman by Lease Cars of America, 140 Cherry Valley Avenue, West Hempstead, New York. He obtained this employment through a friend TONY MARANO, who is one of the owners.

While at his place of employment two men came into the office. As soon as he saw them he ran outside. He recognized one of them as TOMMY, Last Name Unknown, from whom he had borrowed $5,000 during November, 1972, agreeing to pay back the $5,000 plus 5% interest per week. He advised he has never made any payments on this loan.

KORNBLUTH described TOMMY as a white, male, 5'10-11", thin, dark complexion, 35-36 years.

He was first introduced to TOMMY by HAL HOROWITZ from Waverly Florists in Brooklyn, New York. The introduction took place at the Foursome Diner on Avenue U and Strickland Avenue, Brooklyn, New York.

At the time TOMMY came to his place of employment, which was about 2 weeks ago, he (TOMMY) was accompanied by PETE APPOLO. They pressed him for the $5,000 which he owed and arranged for him, through "Jimmy the Greek", to go to the 1st National Bank of East Islip, Long Island, New York to obtain a loan.

Interviewed on 5/3-4/73 at Massapequa Park, Garden City, New York File # NY 179-668

by JAMES T. MOLLOY JTM
SAS MARTIN A. CROWE MAC

Date dictated 5/4/73

KORNBLUTH advised he went to the Bank, spoke to a Mr. CLYDE (phonetic) and applied for a $5,000 loan. He advised that when he made out the loan he gave his employment as with Lease Cars of America for a period of 4½ years.

KORNBLUTH advised he knew this was a false statement when he made it.

KORNBLUTH advised that on 4/27/73 he received a check of $4,000 from the Bank. He explained that bewteen the time he made the application and the time he received the $4,000 check he had been notified by the Bank that they would not approve a $5,000 loan. He then advised the Bank that he would put an additional $1,000 down on the car he was buying. It was his understanding that TOMMY had arranged to provide documents to the Bank which would reflect that the loan he was obtaining was to be secured by a specific automobile.

After obtaining the $4,000 check, the proceeds of the loan, he endorsed and gave the check to TONY MARANO, who cashed it and gave him $3,650 in cash. He then explained that his (KORNBLUTH's)girl friend JEAN LOVERA picked up the cash from MARANO and brought it to him at 331 Connecticut Avenue. This took place on 5/2/73.

On the evening of 5/2/73 he took the cash, amounting to $3,500 to JOE "Sonny" GUILIANO, at GUILIANO's girl friends house.

KORNBLUTH understands that GUILIANO intended to split the $3,500 with TOMMY and "Jo Jo". He stated that he had accepted shylock loans from TOMMY, "Jo Jo" and GUILIANO. He also advised that the agreement also required a weekly payment of $150 to be split in the same manner as the proceeds of the bank loan.

KORNBLUTH advised that he had heard that TOMMY resides somewhere in Oceanside, New York. However, he later found out that TOMMY is employed by World Wide Auto Auctions in Medford, Long Island, New York.

KORNBLUTH advised that he had to stop furnishing information as he had to take $100 to his sister in-law's place of employment in Queens, New York, in order that his brother LENNY could pick it up and pay it to a shylock named "Tony the Patch", KORNBLUTH advised that he estimates that he owes "Tony the Patch" about $25,000.

The interview with KORNBLUTH was resumed at the Garden City, New York Office on the morning of 5/4/73. At the outset he was reminded that he was furnishing this information after having signed a "Waiver of Rights".

KORNBLUTH advised he has accepted shylock loans from the following:

AL MORSE. He was introduced to MORSE by NEIL CAPONE who worked at the Plaza Car Service in Brooklyn, New York about 2 years ago. He borrowed $13,000 and was paying it off at the rate of $250 per week. About a year ago MORSE wanted his money back and he arranged through NEIL's father AL another shylock loan in order to give MORSE his money. During November, 1972 he borrowed another $5,000 from MORSE. 3 or 4 days after that a meeting was held at his place of employment, Marine Park Jewish Center, located at East 34th St. and Avenue S in Brooklyn, New York. This meeting was attended by AL MORSE, AL CAPONE, "Jo Jo", "Sibi", "Charlie", JOE GUILIANO, and another person in the catering business FRANK PINICE, who owns La Pavel Le Mer, located at 18th Avenue and 65th Street in Brooklyn, New York. He had accepted shylock loans from all of those in attendance except PINICE. He owed him money for some musicians he had used. He explained the purpose of the meeting was for the shylocks to decide what to do about him. The decision made at the meeting was for him to keep working and to keep paying. The following night AL CAPONE, JOE GUILIANO, and AL MORSE came to his office at the Jewish Center. These three left after a short while. However, a short time later AL MORSE returned and pistol whipped him on the head. He stated that this incident was observed by two of his employees, RAY and AL, last names unknown. The following night he was admitted to Gracie Square Hospital in Manhattan, New York, and treated for the injuries received in the beating by MORSE.

"Jo Jo". He was introduced to "Jo Jo" by HAL HOROWITZ who is employed at the Waverly Florists. He borrowed $11,000 and was to repay in weekly payments of $330. He has not made any payments since November, 1972. He met this man at a club in Jamaica, New York.

"Sibi". He was introduced to this man by BOBBY BERNSTEIN about a year ago. He borrowed $7,200 and agreed to repay with 5% interest per week. He has made no payments since 11/72. He met him at a shoe store in a shopping center near Ralph Avenue and 72nd Street.

"Tony the Patch". KORNBLUTH advised he met this man about 8 years ago when he (KORNBLUTH) was Manager of the South Shore Yacht Club, Freeport, New York. He later became a partner with him in a catering business at Marine Park, Brooklyn, New York. He later bought out his interest. During 9/72 he accepted a shylock loan from him of 7 or $8,000. The advised that the vigorish on this loan varried from 5-7%. During 11/72 he stopped making payments on this loan. About 2 months ago he started making payments again because "Tony the Patch" had come to his father's butcher store looking for him. These payments are made by his brother LENNY at a new carpet store in Queens under the elevated train tracks near 91st Street.

The following was obtained by observation and interview:

Name	HARVEY ARTHUR KORNBLUTH
Also known as	Harvey Kaye, H. Arthur Kornbluth
DPOB	3/27/39, Brooklyn, New York
Race	White
Sex	Male
Height	5'9"
Weight	220
Hair & Eyes	Brown
Social Security#	116-30-1059
Wife	LINDA BERKOWITZ KORNBLUTH, Brooklyn, NY
Children	JODY, age 10; BRETT, age 4
Parents	MAX KORNBLUTH and HARRIET KLAR KORNBLUTH 135 Avenue P. Brooklyn, NY
	Employed: Kornbluth Meats, Flatlands Ave. and 81st St., Brooklyn, NY
Brother	LENNY KORNBLUTH, 746 Bethlynn Court East Meadow, NY
Girl Friend	JEAN LOVERA 331 Connecticut Avenue, Massapequa Park, NY Tel: 798-1655
Residence	With girl friend
Military Service	US Navy (1957-59)
Education	Graduated Lafayette H.S., Brooklyn, NY
Arrests	4 - New York City - Bad Checks. Currently on probation in Brooklyn,NY.

FEDERAL BUREAU OF INVESTIGATION

#3 73CR1065 App. E

1. Date of transcription 5/29/73

PETER MICHAEL FRAPPOLLO was interviewed at the Garden City Resident Agency of the FBI. At the outset he was furnished a form entitled "Voluntary Appearance; Advice of Rights" by SA MARTIN A. CROWE, which he read and signed. He thereafter furnished the following information:

FRAPPOLLO advised that about a month ago he was in the office of a leasing company owned by TONY MORANO on Cherry Valley Avenue in West Hempstead, New York. While there he met a person named HARVEY KORNBLUTH who was looking for a car to buy. He told him he knew of a car for sale and called JIMMY HADJILAZOU and told him that HARVEY KORNBLUTH wanted to buy a car and since he had one for sale, maybe they could do business. FRAPPOLLO advised that KORNBLUTH and HADJILAZOU agreed to meet concerning the car.

FRAPPOLLO advised he had no further contact with KORNBLUTH. About a week later he called HADJILAZOU and found out that KORNBLUTH did not buy the car he had for sale.

FRAPPOLLO advised that he had gone to MORANO's to meet an individual named TOMMY, last name not recalled, in order to try to lease him a car. He claimed that he had TOMMY's telephone number in a book at home.

FRAPPOLLO identified a photograph of THOMAS RAGUSA, Nassau County Police Department Number 55812, dated 1/26/70, as identical with the TOMMY he met at MORANO's leasing company.

FRAPPOLLO did not recall that RAGUSA talked to KORNBLUTH and doubted that he knew him.

FRAPPOLLO denied any knowledge of a shylock loan or any effort to collect money from KORNBLUTH by either himself or RAGUSA. He denied any knowledge of an attempt by KORNBLUTH or anyone else to obtain a loan from the First National Bank of East Islip.

The following was obtained by observation and interview:

Name PETER MICHAEL FRAPPOLLO

Interviewed on 5/25/73 at Garden City, New York File # NY 179-668

by SAS MARTIN A. CROWE
JAMES T. MOLLOY Date dictated 5/29/73

Also known as	Peter Apollo, Peter Srappollo
DPOB	10/8/28, Queens, New York
Height	5' 8"
Weight	260
Hair	Brown, balding
Eyes	Blue
Residence	350 Ocean Avenue, Massapequa, New York Private house - acquired 6/72 cost - $65,000. Monthly mortgage payment - $548.
Wife	GALE FRAPPOLLO
Former Wife	RUTH BAYUS
Children	MICHAEL, 21 PAUL DAVID, 17 LEE ANN, 15 LINDA, 13 PAUL EDWARD, 9 DANIEL, 6 TINA, 3
Prior Residence	44-15 25th Avenue, Astoria, Queens, New York 11/29/71 to May or June, 1972
Sister	DIANE ISRAEL West 10th St., Brooklyn, NY
Brother	PAUL SAMUEL FRAPPOLLO Colonel, US Marine Corps Naval Air Base, Laguna Beach, California
Mother	ROSE, resides with DIANE ISRAEL
Father	PAUL MICHAEL FRAPPOLLO, deceased
Occupation	car salesman
Employment	Greenspan Motors, New Hampton, NY (1969-1970) Security Cars, Amityville, New York (11/71-3/72) Suffolk Auto Liquidators, Bronx and Farmindale, NY (3/72-10/ World of Auto Auctions Medford, NY (10/72 - 5/23/73)
Prison	Sing Sing, NY (10/70 - 11/71) Bad checks

GOVERNMENT EXHIBIT #8 [illegible] 73 CR 1065

APP C

...MENT LOAN APPLICA...

AMOUNT	NO. OF MONTHS	MONTHLY PAYMENTS	
5,000 / 4,000	36	[X] Beginning One Month From Date of Loan	[ ] Beginning On 19

...OTOR VEHICLE WHICH WILL COST ABOUT $ 7,200

...ER REASON: [illegible]

...Name	Age	S.S. #	Date of Birth	Draft Status
[illegible]	36	116-50-1659	3/27/36	Honorable Discharge

...Name: JEAN — Home Tel. No. [illegible] 7464 — No. of Children 2 — [illegible] F.

East Meadow — N.Y. — 11554 — Years There 2

Apt. No. — City — State — ZIP — Years There

Massapequa Park — N.Y. — N.A. — Years There 10

Apt. No. — City — State — ZIP — Years There

...s Name & Address M. Kornbluth

If ... Mtge. Bal. $ .... Mo. Payt. $ .... Mtgee. ....

Bank With Manufacturers Hanover Long Island Trust — Branch N. Hempstead — [ ] Regular Checking A/C [X] Special checking A/C [X] Savings A/C

Employed by [ ] Self Employed [ ] MM Leasing Associates Inc. — Position Sales — No. Yrs. There 4½

Firm Name

Address 140 Cherry Valley Ave W. Hemp N.Y. 11552 — Kind of Business Car Leasing — Tel. No. 292-1000

No. & Street — City — State — ZIP

Present Salary $ 24,000 per ....

Badge or Employment No. .... Supervisor A. Morano — Present Commission $ .... per 200.00

Previous Employer .... Address No — No. Years ....

Wife's employment Employer None — Position .... Yrs. there ....

Firm Name

Address .... Tel. No. .... Salary $ .... per ....

No. & Street

Other Income $ None — Per .... Source ....

Nearest Relative (not living with you): M. Kornbluth — 135 Ave. B Bklyn N.Y. — Relationship Father + Mother

Name — Address

DO YOU OWN AN AUTO? [ ] NO [X] YES — IF YES – MAKE Olds Toronado — YR. 1971 — BALANCE DUE 2,600 — TO Bank of Suffolk

NAME OF LENDER	ADDRESS	DATE INCURRED	ORIGINAL AMOUNT	PRESENT BALANCE	MONTHLY PAYMENT
Bank of Suffolk 475 [illegible]	N.A.	4/20/73	$ 5,000	$ 2,600	$ 122
	NO-RECORD		$	$	$
			$	$	$
7511700	5J446066	Bklyn 72 Tor.	$	$	$
			$	$	$

Have you ever been adjudged a bankrupt or have any judgments, garnishments or other legal proceedings ever been filed against you? No

Name & Address of Dealer (Seller) — FOR CAR PURCHASE Ser # 6L47S2Q405482

CASH SELLING PRICE (INCLUDING TAXES, ACCESSORIES, ETC.)	$ 7,200	DESCRIPTION OF VEHICLE	[ ] NEW	[X] USED
CASH DOWN PAYMENT	$ 2,200	YEAR 1972	NUMBER OF CYLINDERS 8	
TRADE-IN ALLOWANCE	None	MAKE Cadillac	AIR COND.	AUTO TRANS.
AMOUNT OWING ON TRADE	None	MODEL Coupe Deville	VINYL ROOF	POWER BRKS.
NET ALLOWANCE ON TRADE	$ None	BODY TYPE 2 Dr. Coupe	POWER STR.	
TOTAL DOWN PAYMENT	$ 2,200	DESCRIPTION OF TRADE-IN [illegible]		
UNPAID BALANCE	5,000 / $ 5,000	YEAR None	MAKE	MODEL

I affirm that each of the foregoing statements are true and correct and made for the sole purpose of inducing The First National Bank of East Islip, to extend credit to me at a rate not exceeding six dollars per annum discount per hundred dollars face amount of loan. I agree that this application may remain your property and that I will notify the bank of any material change in this statement. You are authorized to obtain any information you may require relating to this application from my employer, if any, and from any other sources.

[signature]
FULL SIGNATURE OF APPLICANT

[illegible]

DISPOSITION — RESERVED FOR USE OF BANK — BRANCH

Approved [ ] 4/20/73 — 4/20/73 — Rejected [X] 4/20/73 [illegible] — [illegible] — Other [ ]

INSTALLMENT LOAN APPLICATION

TO THE FIRST NATIONAL BANK OF EAST ISLIP

I hereby make application for a loan of ... AMOUNT $ 5,000 (4,000) NO. OF MONTHS 36

MONTHLY PAYMENTS [X] Beginning One Month From Date of Loan [ ] Beginning On 19

[ ] TO PURCHASE A MOTOR VEHICLE WHICH WILL COST ABOUT $ 4,200

PURPOSE OF LOAN: [ ] PLEASE STATE OTHER REASON: Cadillac

Name (First) Arthur Kornbluth | Age 36 | S.S. # 116 50 1159 | Date of Birth 5 27 36 | Draft Status Honorable Discharge

First Name Middle Name Last Name

Married [X] Single [ ] Separated [ ] Name of Wife Jean | Home Tel. No. 485 7464 | No. of Children 2

Home Address 746 Bellwood (No. & Street) Apt. No. | East Meadow (City) | N.Y. (State) | 11554 (ZIP) | Years There

Last Address 351 Connecticut Ave (No. & Street) Apt. No. | Massapequa Park (City) | N.Y. (State) | N.A. (ZIP) | 10 Years There

Residence If rented: Rent $ 300 per month | Landlord's Name & Address A. Kornbluth

If owned: Value $ ...... Mtge. Bal. $ ...... Mo. Pmt. $ ...... Mtgee. ......

Bank With Manufacturers Hanover Long Island Trust Branch N. Hempstead | [ ] Regular Checking A/C [X] Special checking A/C [ ] Savings A/C

Employed by [ ] Self Employed [ ] M.M. Leasing Associates Inc. | Position Sales | No. Yrs. There 4½

Address 140 Cherry Valley Ave W. Hemp N.Y. 11552 (No. & Street, City, State, Zip) | Kind of Business Car Leasing | Tel. No. 292-1000

Present Salary $ 24,000 per yr | Present Commission $ ...... per 200.00

Badge or Employment No. | Supervisor A. Morano | No. Years

Previous Employer | Address

Wife's employment Employer None | Position | Yrs. there

Firm Name | Tel. No. | Salary $ ...... per ......

Address (No. & Street)

Other Income $ None Per Source

Nearest Relative (not living with you): A. Kornbluth | 135 Ave B Bklyn N.Y. (Address) | Relationship Father / Mother

DO YOU OWN AN AUTO? [ ] NO [X] YES | IF YES—MAKE Olds Toronado YR. 1972 | BALANCE DUE 2,600 | TO Bank of Suffolk

NAME OF LENDER	ADDRESS	DATE INCURRED	ORIGINAL AMOUNT	PRESENT BALANCE	MONTHLY PAYMENT
Bank of Suffolk	N.A.	4/20/73	$5,200	$2,600	$122
NO-RECORD			$	$	$
			$	$	$
7511700	J446066	4/46 – 72 Tor.	$	$	$
			$	$	$

Have you ever been adjudged a bankrupt or have any judgments, garnishments or other legal proceedings ever been filed against you? No

FOR CAR PURCHASE Ser # 6L47S3Q405482

Name & Address of Dealer (Seller)

CASH SELLING PRICE (INCLUDING TAXES, ACCESSORIES, ETC.)		$ 7,200
CASH DOWN PAYMENT	$2,200	
TRADE-IN ALLOWANCE	None	
AMOUNT OWING ON TRADE	$ None	
NET ALLOWANCE ON TRADE	None	
TOTAL DOWN PAYMENT		$ 2,200
UNPAID BALANCE	500	$ 5,000

DESCRIPTION OF VEHICLE: [ ] NEW [X] USED

YEAR 1972 | NUMBER OF CYLINDERS 8

MAKE Cadillac | AIR COND. | AUTO TRANS

MODEL Coupe De Ville | VINYL ROOF | POWER BRKS

BODY TYPE 2 Dr. Coupe | POWER STR

DESCRIPTION OF TRADE-IN

YEAR None | MAKE | MODEL

I affirm that each of the foregoing statements are true and correct and made for the sole purpose of inducing The First National Bank of East Islip, to extend credit to me at a rate not exceeding six dollars per annum discount per hundred dollars face amount of loan. I agree that this application may remain your property and that I will notify the bank of any material change in this statement. You are authorized to obtain any information you may require relating to this application from my employer, if any, and from any other sources.

[signature] FULL SIGNATURE OF APPLICANT

4000 ...

DISPOSITION | RESERVED FOR USE OF BANK | BRANCH

4/24/73 | 4/20/73 | 4/20/73

Approved [X] Rejected [X] Other [ ]

App D.

083619

THE FIRST NATIONAL BANK of East Islip

PAID OUT CANCELLED
The First National Bank
OF EAST ISLIP, N. Y.

EAST ISLIP, N. Y.

50-72
214

GOVERNMENT EXHIBIT
#10 Evid
73 CR 1065

EXACTLY $4000 AND 00 CTS

AMOUNT
$ 4,000.00

DATE April , 1973

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

PAYMENT STOPPED

PAYMENT STOPPED

PAYMENT STOPPED

...hluth and
...ilazou

4,000.00

"00 522"9" 84 "0000400000"

147862 73 AP 30

CHECK ⑆0214⑈0720⑆

C-5

083619

THE FIRST NATIONAL BANK

PAID OR CANCELLED
The First National Bank
OF EAST ISLIP, N. Y.

East Islip

EAST ISLIP, N. Y. 50-720
214

ANCHOR YOUR FINANCES

SIGNATURE

EXACTLY 4000400 DOLLARS

PAY

TO THE ORDER OF Arthur Kornbluth and James Padilazou

DATE April 27, 1973

AMOUNT $ 4,000.00

PAYABLE THROUGH THE FIRST NATIONAL BANK OF EAST ISLIP, N. Y.

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

ILD-OFFICIAL CHECK

⑆147862 73AP 30 4,000.00-CS ⑆0214⑈07201⑆ ⑈00 522⑈9⑈ 81 "0000400000"

Arthur Corbett

James Hatzikazor

MAY 27